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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-130
ACCUSATION

13 JUDITH LYNN AUSTIN
14 aka JUDITH LYNN ZAWACKI
94 Dornoch Way
Trabuco Canyon, CA 92679

15 Registered Nurse License No. 525173

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 14, 1996, the Board of Registered Nursing issued
24 Registered Nurse License Number 525173 to Judith Lynn Austin, also known as Judith Lynn
25 Zawacki, and Judith Lynn Austin-Zawacki (Respondent). The Registered Nurse License was in
26 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
27 2010, unless renewed.

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1 person who holds a license, upon the ground that the applicant or the licensee has
2 been convicted of a crime substantially related to the qualifications, functions,
3 and duties of the licensee in question, the record of conviction of the crime shall
4 be conclusive evidence of the fact that the conviction occurred, but only of that
5 fact, and the board may inquire into the circumstances surrounding the
6 commission of the crime in order to fix the degree of discipline or to determine if
7 the conviction is substantially related to the qualifications, functions, and duties
8 of the licensee in question.

9 As used in this section, "license" includes "certificate," "permit,"
10 "authority," and "registration."

11 9. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or licensed
13 nurse or deny an application for a certificate or license for any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to, the
15 following:

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17 (f) Conviction of a felony or of any offense substantially related to the
18 qualifications, functions, and duties of a registered nurse, in which event the
19 record of the conviction shall be conclusive evidence thereof.

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21 10. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the
23 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
24 for a person licensed under this chapter to do any of the following:

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26 (b) Use any controlled substance as defined in Division 10 (commencing
27 with Section 11000) of the Health and Safety Code, or any dangerous drug or
28 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
or in a manner dangerous or injurious to himself or herself, any other person, or
the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

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1 11. California Code of Regulations, title 16, section 1444, states:

2 A conviction or act shall be considered to be substantially related to the
3 qualifications, functions or duties of a registered nurse if to a substantial degree it
4 evidences the present or potential unfitness of a registered nurse to practice in a
 manner consistent with the public health, safety, or welfare. Such convictions or
 acts shall include but not be limited to the following:

5 (a) Assaultive or abusive conduct including, but not limited to, those
6 violations listed in subdivision (d) of Penal Code Section 11160.

7 (b) Failure to comply with any mandatory reporting requirements.

8 (c) Theft, dishonesty, fraud, or deceit.

9 (d) Any conviction or act subject to an order of registration pursuant to
 Section 290 of the Penal Code.

10 12. California Code of Regulations, Title 16, section 1445 states:

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12 (b) When considering the suspension or revocation of a license on the
13 grounds that a registered nurse has been convicted of a crime, the board, in
14 evaluating the rehabilitation of such person and his/her eligibility for a license
 will consider the following criteria:

15 (1) Nature and severity of the act(s) or offense(s).

16 (2) Total criminal record.

17 (3) The time that has elapsed since commission of the act(s) or
 offense(s).

18 (4) Whether the licensee has complied with any terms of parole,
19 probation, restitution or any other sanctions lawfully imposed
 against the licensee.

20 (5) If applicable, evidence of expungement proceedings pursuant
 to Section 1203.4 of the Penal Code.

21 (6) Evidence, if any, of rehabilitation submitted by the licensee.

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23 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
24 request the administrative law judge to direct a licensee found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(May 3, 2006 Criminal Conviction for Driving Under the Influence on November 9, 2005)**

3 14. Respondent has subjected her license to disciplinary action under sections
4 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered nurse. The
6 circumstances are as follows:

7 a. On or about May 3, 2006, in a criminal proceeding entitled *People*
8 *of the State of California v. Judith Lynn Austin Zawacki*, in Orange County Superior Court Case
9 No. 05SM06220, Respondent was convicted on her plea of guilty for violating Vehicle Code
10 section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor.

11 b. As a result of the conviction, on or about May 3, 2006, Respondent
12 was sentenced to three years informal probation, and payment of fees, fines, and restitution in the
13 amount of \$1,471.50. Respondent was further ordered to attend and complete a nine-month
14 Level 2 First Offender Alcohol Program, a MADD Victim's Impact Panel, and not to drive with
15 a measurable amount of alcohol in her blood. At a hearing on June 19, 2006, Respondent's
16 probation was revoked for failure to enroll in the First Offender Alcohol Program. Probation
17 was reinstated. At a hearing on November 15, 2006, Respondent's probation was revoked for
18 failure to pay fines/fees in the amount of \$1,471.50 and failure to show proof of completing the
19 MADD impact panel. Probation was reinstated and modified. At a hearing on February 25,
20 2008, Respondent's probation was revoked for the DUI arrest detailed in paragraph 15, below.

21 c. The circumstances that led to the conviction were that on or about
22 the evening of November 9, 2006, deputies from the Orange County Sheriff's Department
23 responded to a Rancho Santa Margarita shopping mall parking lot in response to reports of a
24 possible drunk driver. The deputies observed Respondent passed out in the driver's seat of a
25 Ford Explorer with the door open and the keys in her lap. Two separate witnesses reported to
26 the deputies that they observed Respondent driving in an erratic manner, nearly striking their
27 respective vehicles as she swerved from lane to lane, and then ran a red stoplight. The witnesses
28 followed Respondent to the parking lot and identified her to the deputies as the same driver and

1 vehicle they observed earlier. The deputies woke Respondent; she appeared to be disoriented to
2 time and place. Her voice was slurred and her breath smelled of alcohol. Respondent admitted
3 to the deputies that she had been drinking alcohol prior to driving. The deputies administered a
4 series of field sobriety tests, none of which Respondent completed successfully. Based on
5 Respondent's objective symptoms of intoxication, her performance of the field sobriety tests, her
6 admission to drinking alcohol, and the statements from witnesses, Respondent was placed under
7 arrest for driving under the influence. Respondent was transported to the Orange County Jail
8 where she was offered a breath test or a blood test. Respondent stated she would take a breath
9 test, however she ignored the deputy's instructions and refused to provide a sample. A blood
10 technician was contacted to draw a blood sample from Respondent. The deputy told Respondent
11 that because she refused a breath test, they would require a blood sample. Respondent refused to
12 provide a blood sample. Respondent was admonished that if she refused to provide either a
13 blood or breath sample, her driver's license could be suspended for one year, or revoked for 2-3
14 years. Respondent refused to provide a blood sample.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(May 5, 2008 Criminal Conviction for DUI With Prior, Vehicular Hit and Run, 17 and Obstructing a Peace Officer on November 13, 2007)**

18 15. Respondent has subjected her license to disciplinary action under sections
19 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
20 substantially related to the qualifications, functions, and duties of a registered nurse. The
21 circumstances are as follows:

22 a. On or about May 5, 2008, in a criminal proceeding entitled *People*
23 *of the State of California v. Judith Lynn Austin*, in Orange County Superior Court Case No.
24 08SM00353, Respondent was convicted on her plea of guilty for violating Vehicle Code sections
25 23152, subdivision (a), driving under the influence of alcohol with a prior DUI conviction within
26 10 years; 20002, subdivision (a), hit and run with property damage; and Penal Code section 148,
27 subdivision (a)(1), resisting and obstructing a peace officer, misdemeanors. It was further
28 alleged that Respondent's blood alcohol concentration was in excess of .15%.

1 b. As a result of the conviction, on or about May 5, 2008, Respondent
2 was sentenced to 30 days in jail (with credit for one day served), three years informal probation,
3 attend and complete an 18-month Multiple Offender Alcohol Program, attend and complete a
4 MADD Victim's Impact Panel, attend and complete a 90-day outpatient alcohol program, and
5 payment of fees, fines, and restitution.

6 c. The circumstances that led to the conviction were that on or about
7 the evening of November 13, 2007, California Highway Patrol officers were dispatched to a non-
8 injury collision on a San Juan Capistrano street. A witness reported that he was driving down
9 the street when his vehicle was side-swiped by Respondent who was driving a Chevy Tahoe
10 SUV. Respondent failed to stop, so the witness followed Respondent in his vehicle. The
11 witness then observed Respondent side-swipe the rear of another vehicle that was stopped at a
12 stop sign. Respondent failed to stop and continued until she reached a closed security gate of a
13 gated community, with both witness-drivers following. The witnesses honked their horns at the
14 security guard to prevent Respondent from entering the community. Upon arriving at the scene,
15 the officer noted that Respondent's eyes were red and watery and her breath smelled of alcohol.
16 Her balance was poor and she was swaying from side to side. Respondent admitted to the officer
17 that she had consumed three beers earlier. Respondent was directed to remain seated in her
18 vehicle. While the officer interviewed the witness drivers, Respondent fled the scene on foot.
19 She was later apprehended walking down an adjacent street and was returned back to the scene
20 by another CHP officer. Respondent was administered several field sobriety tests which she
21 failed to perform as explained and demonstrated. Respondent refused to complete the
22 Preliminary Alcohol Screening test. Based on Respondent's objective symptoms of intoxication,
23 her admission to drinking alcohol, her failure to perform the field sobriety tests, and witness
24 statements, Respondent was arrested for driving under the influence of alcohol. Respondent was
25 arrested and transported to the Orange County Jail where she provided a blood sample. A
26 Forensics Alcohol Examination Report stated Respondent's blood alcohol content was 0.188.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 16. Respondent has subjected her license to disciplinary action under section
4 2762, subdivision (b) of the Code in that Respondent used alcohol in a manner dangerous and
5 injurious to herself and the public as evidenced by Respondent's two alcohol-related convictions
6 as alleged in paragraphs 14 and 15, above, and constitutes unprofessional conduct.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

9 17. Respondent has subjected her license to disciplinary action under section
10 2762, subdivision (c) of the Code in that Respondent was convicted of two alcohol-related
11 offenses in a two-year period as alleged in paragraphs 14 and 15, above. Respondent's
12 convictions and her inability to abide by the terms and conditions of her probation constitute
13 unprofessional conduct.

14 **PRAYER**


15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 525173,
18 issued to Judith Lynn Austin;

19 2. Ordering Judith Lynn Austin to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 11/26/08

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26 RUTH ANN TERRY, M.P.H., R.N.
27 Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant